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OGC 77-0983

15 February 1977

MEMORANDUM FOR : Admiral Turner

FROM : Anthony A. Lapham
General Counsel

SUBJECT : Changes in DCI Responsibilities on Shift
from Peace to War

1. This is in response to your request relayed to us by [redacted] for a paper concerning changes in the responsibilities of the Director in the event of a shift from peace to war.

2. In the event of a declaration of war, there undoubtedly would be prompt enactment of war powers legislation in various areas. Quite possibly such legislation would in some way subordinate the Director and the Agency to the Secretary of Defense or the Joint Chiefs. It is of interest and a likely pattern that the Office of Strategic Services created during World War II by a military order of the Commander-in-Chief (not the President) was under the jurisdiction of the Joint Chiefs. An additional and alternative possibility is that by legislation or Executive order, Agency installations and personnel located in an area of the world where United States military forces existed would become subordinate to the commanding officer.

3. There is no existing statute which would modify the Director's responsibility in the event of war. In particular, neither the National Security Act of 1947, which established the Agency or the position of Director, or the CIA Act of 1949 addresses the subject.

4. Several NSC Intelligence Directives provide for changes in DCI authority and responsibility in the event of war:

(a) NSCID No. 5 (section 8) provides that in "active theaters of war where U.S. forces are engaged ... the entire Central Intelligence Agency organization conducting espionage and clandestine counterintelligence operations in or from a theater shall, as a component force, be under the direct command of the

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U.S. Theater Commander, in accordance with agreements separately reached between the Director of Central Intelligence and the Secretary of Defense, and shall provide espionage and counterintelligence support to military operations."

(b) NSCID No. 4, which establishes the government's defector program, provides that "in active theaters of war where U.S. forces are engaged, this directive is inapplicable."

(c) NSCID No. 8 established the photographic interpretation program for the intelligence agencies, including the National Photographic Interpretation Center (NPIC), to be operated by the Director of Central Intelligence as a service of common concern. The directive also provides that the "administration of NPIC in time of war shall be transferred to the Secretary of Defense."



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Anthony A. Lapham

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